FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 62/2005

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 9, 2007.

Heard the learned counsel for parties.

The appellant is the original defendant no. 2. A suit was filed by the respondent no.1/ plaintiff for grant of decree for specific performance of contract against the defendant no.1. According to the plaintiff, defendant no.1 had agreed to sell the suit plot which fell to the share of the defendant no. 1 in partition between the two brothers i.e. defendant no.1 and the defendant no.2. It is further pleaded by the plaintiff that the defendant no.2 forcibly obtained the possession of the suit plot from the defendant no.1 and, therefore, he sought a decree for possession of the suit property. Both the defendants have filed separate written statements, and resisted the claim of the plaintiff. It was pleaded by the defendant no.2/appellant that the plaintiff had got an earnest note executed from the defendant no.1 by practicing fraud upon him.

According to the defendant no.2, the defendant no. 1 had relinquished the suit property in favour of the defendant no.2 and, therefore, the suit of the plaintiff was liable to be dismissed.

Both the Courts have concurrently found that the plaintiff was entitled to a decree for specific performance of contract of sale dated 27/7/1994. According to both the Courts, the plaintiff was ever ready and willing to perform his part of the contract and the defendant no.2 had failed to prove that the plaintiff has practiced fraud on the defendant no.1 and had got the earnest note executed from him. The Courts further found that the relinquishment deed was not a registered one and, therefore, was not admissible in evidence. Both the Courts, therefore, held that the defendant no.2 had failed to prove that the defendant no.1 had relinquished his half share in the property in favour of the defendant no.2. The Courts also recorded a finding that the plaintiff had succeeded in proving that the defendant no.2 forcibly obtained the possession of the suit plot from the defendant no.1.

The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law. It cannot be said that the plaintiff was not entitled to file a suit against both the defendants as causes of action against both the defendants were separate and the

plaintiff was, therefore, precluded from filing one suit against both the defendants.

For the aforesaid reasons, the second appeal is dismissed with no order as to costs.

JUDGE

RMP